

Service Date: August 14, 1997

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF the Application of U S WEST)
Communications, Inc. for Approval of the Agreement) UTILITY DIVISION
Between CommNet Cellular, Inc. and U S WEST) DOCKET NO. D97.4.64
Communications, Inc., Pursuant to Section 252(e) of)
the Telecommunications Act of 1996.) ORDER NO. 5996

ORDER APPROVING INTERCONNECTION AGREEMENT

Introduction and Procedural Background

U S WEST Communications, Inc. (U S WEST) and CommNet Cellular, Inc. (CommNet) negotiated a wireless interconnection agreement, initially filed with the Montana Public Service Commission (Commission) on April 14, 1997. Along with its letter requesting approval of the interconnection agreement, U S WEST filed a document entitled "U S WEST Communications, Inc.'s Reservation of Rights Regarding Filing of Wireless Interconnection Agreement." This document included a statement that "U S WEST considers this COMMNET agreement, as with the Western agreement, to be an arbitrated agreement." The Commission rejected this filing as incomplete because it was filed as an "arbitrated" agreement when, in fact, no arbitration had been requested or had taken place between U S WEST and CommNet.

U S WEST considered the agreement to be arbitrated because it includes terms and conditions which were arbitrated by the Commission and approved in a prior docket. See In the Matter of Western Wireless Corporation's Petition for Arbitration Pursuant to § 252(b) of the Telecommunications Act of 1996, of the Rates, Terms, and Conditions of Interconnection with U S WEST Communications, Inc., Docket No. D96.9.150, Order No. 5949b, at 14 (Dec. 27, 1996). U S WEST refiled the agreement as a negotiated agreement on May 12, 1997, this time

including an agreement signed by U S WEST and CommNet entitled "Agreement to Adopt Arbitrated Interconnection Agreement CommNet Cellular-Montana." This "Adoption Agreement" provides that the Western Wireless arbitrated agreement may only be adopted in toto.

The Commission issued a Notice of Application for Approval of Interconnection Agreement and Notice of Opportunity to Intervene and Comment on May 21, 1997. This notice established a deadline for intervention of May 30, 1997, and a separate deadline for comments of June 6, 1997. The Commission received no comments and no requests for intervention or hearing.

Findings of Fact and Commission Decision

1. CommNet, a Commercial Mobile Radio Service (CMRS) provider, offers cellular communications throughout Montana pursuant to its Federal Communications Commission (FCC) radio license. As an incumbent local exchange carrier, U S WEST is required by the Act to provide interconnection with CMRS carriers and to establish reciprocal compensation arrangements for the transport and termination of telecommunications. See 47 U.S.C. § 251(b)(5).

2. U S WEST and CommNet executed an Adoption Agreement on March 21, 1997, in which they agreed, inter alia, to adopt the entire interconnection agreement that U S WEST had entered into with Western Wireless Corporation. The Adoption Agreement is not a part of the interconnection agreement submitted to the Commission for approval under the Act and has no bearing or effect on our consideration of the interconnection agreement pursuant to the Act.

3. The Western Wireless Corporation/U S WEST agreement was reached in part through negotiation and in part through arbitration. The CommNet/U S WEST interconnection agreement, although identical to the Western Wireless/U S WEST agreement, must be approved by this Commission prior to implementation.

4. Section 252(e)(4) of the Telecommunications Act of 1996 (1996 Act) provides that a negotiated agreement submitted for a state commission's approval must be approved or rejected within 90 days or it will be deemed approved. Thus, Commission approval or rejection according to the substantive standards set forth in the 1996 Act must issue by August 11, 1997, or the Agreement will be deemed approved. The Commission must approve or reject the

agreement, with written findings as to any deficiencies. 47 U.S.C. § 252(e)(1).

5. Section 252(e)(2)(A) prescribes the grounds for rejection of an agreement reached by negotiation:

(2) GROUNDS FOR REJECTION.--The State commission may only reject--

(A) an agreement (or any portion thereof) adopted by negotiation under [47 U.S.C. § 252(a)] if it finds that--

(i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity;

The standard for approving an agreement reached by negotiation under § 252 (e)(2)(A) as set forth above is different than the standard for approving an arbitrated agreement in § 252(e)(2)(B) of the Act. We reviewed the Western Wireless agreement according to the latter standard, which permits rejection of an arbitrated agreement only when the agreement does not meet the requirements of § 251, the FCC regulations adopted pursuant to § 251, or the pricing standards in § 252(d).

6. The requirements of § 251, however, include a duty on the part of U S WEST to provide interconnection on rates, terms and conditions that are just, reasonable and nondiscriminatory. U S WEST has complied with this duty by offering CommNet the same rates, terms and conditions that it offers to Western Wireless as a result of both negotiation and arbitration. Therefore, the nondiscrimination requirement of § 252(e)(2)(A)(i) has been met and the Commission may not reject the agreement on that basis.

7. Our review is thus narrowed to making the determination as to whether the agreement is consistent with the public interest, convenience and necessity, according to § 252(e)(2)(A)(ii) of the Act. In a sense, the standard for approval of an arbitrated agreement is more restrictive than a negotiated agreement such as this one. For example, parties can negotiate an agreement without regard to the standards in § 251(b) and § 251(c), which include obligations for all local exchange carriers and additional obligations of incumbent local exchange carriers, respectively. However, these duties that are required in connection with approval of an arbitrated

agreement contain elements which directly affect the public interest. As an example, the requirement to provide number portability according to the FCC's rules not only affects the new competitor by removing a possible barrier to his ability to attract customers, but also the end user customer who may switch providers without having to change his telephone number. See 47 U.S.C. § 251(b)(2).

8. Thus, consistency with the public interest, convenience and necessity is supported by our prior finding in *Western Wireless* that the identical agreement has met the requirements of § 251, the FCC regulations adopted pursuant to § 251 and the pricing standards in § 252(d). Another indicator of this consistency is the fact that the Commission received no comments in response to the notice issued in this proceeding and no requests for intervention or a hearing. These two factors, combined with our independent review of the agreement with the public interest, convenience and necessity in mind, support a conclusion that the agreement should be approved.

Conclusions of Law

1. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA. U S WEST is a public utility offering regulated telecommunications services in the State of Montana. Section 69-3-101, MCA.

2. The Commission has authority to do all things necessary and convenient in the exercise of the powers granted to it by the Montana Legislature and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. Section 69-3-103, MCA.

3. CommNet Cellular, Inc. provides cellular communications in Montana. Cellular communications are not regulated by the Commission. Section 69-3-804, MCA.

4. The United States Congress enacted the Telecommunications Act of 1996 to encourage competition in the telecommunications industry. Congress gave responsibility for much of the implementation of the 1996 Act to the states, to be handled by the state agency with regulatory control over telecommunications carriers. See generally, the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (amending scattered sections of the Communications Act of 1934, 47 U.S.C. §§ 151, et seq.). The Montana Public Service Commission is the state agency charged with regulating telecommunications carriers in Montana and properly exercises

jurisdiction in this Docket pursuant to Title 69, Chapter 3, MCA.

5. Adequate public notice and an opportunity to be heard has been provided to all interested parties in this Docket, as required by the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

6. The 1996 Act allows renegotiation of existing interconnection contracts between CMRS providers and incumbent LECs to provide for reciprocal compensation. 47 U.S.C. § 251(b)(5). The Commission has jurisdiction to approve the Montana Wireless Interconnection Agreement negotiated by the parties and submitted to the Commission for approval. Section 69-3-103, MCA.

7. The Commission properly exercises its jurisdiction in approving the negotiated interconnection agreement between CommNet and U S WEST, according to the standards set forth in 47 U.S.C. § 252(e)(2)(A).

8. Approval of interconnection agreements by the Commission is subject to the requirements of federal law as set forth in 47 U.S.C. § 252. Section 252(e) limits the Commission's review of a negotiated agreement to the standards set forth therein for rejection of such agreements. Section 252(e)(4) requires the Commission to approve or reject the parties' arbitrated agreement by August 11, 1997, or it will be deemed approved.

Order

THEREFORE, based upon the foregoing, it is ORDERED that the Wireless Interconnection Agreement - Montana, voluntarily negotiated by the parties and submitted to this Commission for approval pursuant to the Telecommunications Act of 1996, is APPROVED.

DONE AND DATED this 11th day of August, 1997, by a vote of 5 - 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.